



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-S-M-

DATE: DEC. 5, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner was employed in a factory as a general laborer and then as a sewing machine operator. He worked approximately 78 hours per week, but his employer avoided paying him for all of his overtime hours by dividing his work into day and night shifts, and treating the shifts as employment with two different companies. He also was not compensated for his work as a supervisor. During his employment, U.S. Immigration and Customs Enforcement (ICE) conducted an immigration enforcement action on the factory and arrested the Petitioner. After the Petitioner was released on bond, he learned about the U.S. Department of Labor's (DOL's) investigation of his employer. He met with the investigators and provided information that was used to take legal action against the factory. The DOL certified that the Petitioner's employer had engaged in obstruction of justice and the Petitioner was helpful to their detection of that crime.

Based on these events and the DOL's certification, the Petitioner seeks U-1 nonimmigrant classification as a victim of qualifying criminal activity. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(U) and 214(p), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The U-1 classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity and who suffer substantial abuse as a result of their victimization.

The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner had not established that he suffered substantial physical or mental abuse as the result of the obstruction of justice.

On appeal, the Petitioner submits a brief and a psychological evaluation. The Petitioner asserts that the mental abuse he suffered was substantial and a result of his employer's obstruction of justice.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

U-1 nonimmigrant classification is granted to victims of qualifying crimes who suffer substantial physical or mental abuse as a result of the offenses. Section 101(a)(15)(U)(i) of the Act. These victims must also possess information regarding the qualifying crime and be helpful to law

enforcement officials in their investigation or prosecution of the crime. *Id.*; 8 C.F.R. § 214.14(b)(2)-(3). A U petition must be filed with a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioner's victimization and helpfulness in the investigation or prosecution of qualifying criminal activity.¹ Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i).

Whether abuse is substantial is based on a number of factors, including “[t]he nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.” 8 C.F.R. § 214.14(b)(1).

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). A U petitioner may submit any evidence for us to consider along with the Supplement B, but we determine, in our sole discretion, the credibility of and the weight to give all of the evidence. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

In his affidavits, the Petitioner provided the following account of his experiences. The Petitioner began his employment at a factory in Massachusetts in 2005, first as a general laborer, then as a machine operator, and later as a supervisor. He was employed approximately 48 hours per week on the day shift and 30 hours per week on the night shift, but only received eight hours of overtime pay. He did not receive an additional salary for his work as a supervisor. The workplace conditions were tightly controlled and employees were monitored and not allowed to use the restroom for more than a few minutes. The Petitioner stated in his affidavit that the factory owner carried a rifle, which he sometimes fired from the factory roof to intimidate the workers.² The Petitioner explained the employees feared the factory owner and believed that they would lose their jobs if they complained. In [REDACTED] 2007, ICE conducted an immigration raid on the factory and arrested the factory workers, including the Petitioner. The Petitioner was placed in removal proceedings and transported to a detention facility in Texas where he was detained for 22 days before being released on bond.³ Almost a year after his release, the Petitioner learned that the DOL was involved in the investigation of his employer. He met with DOL investigators from the Wage and Hour Division who were preparing to take legal action against the factory owner.

¹ The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted.

² In the psychological evaluation submitted on appeal, the gun is more fully described as a “pellet gun” which the owner used to shoot pigeons.

³ In 2010, an Immigration Judge granted the Petitioner voluntary departure with an alternative order of removal to Guatemala if he failed to depart. The Board of Immigration Appeals dismissed a subsequent appeal and the U.S. Circuit Court of Appeals for the First Circuit denied a petition for review.

In 2015, the Petitioner filed his U petition with the DOL's certification (Supplement B) that he was the victim of obstruction of justice in violation of 18 U.S.C. § 1519 and that he had been helpful to their investigation of the crime.⁴ In the attachment to the Supplement B, the DOL stated that they investigated that the Petitioner's employer committed obstruction of justice because he circumvented U.S. wage and labor laws by reporting that the workers were employed with two companies to avoid paying them overtime.

The Director denied the U petition, concluding that the Petitioner had not demonstrated that he suffered substantial physical or mental abuse as the result of the obstruction of justice. Specifically, the Director determined that the harm the Petitioner experienced resulted primarily from ICE's immigration enforcement action on his workplace, rather than his employer's actions. On appeal, the Petitioner submits a psychological evaluation and claims that this evaluation and his affidavits show that he has suffered substantial mental abuse as a result of his employer's obstruction of justice, given his pre-existing post-traumatic stress disorder (PTSD) caused by the traumatic events he suffered in Guatemala.

A review of the evidence does not sufficiently establish the Petitioner suffered from substantial mental or physical abuse as a result of his employer's actions. In his affidavits, the Petitioner discussed the trauma he and his family suffered during the civil war in Guatemala as indigenous persons of Mayan descent. Although many of the atrocities discussed by the Petitioner occurred prior to his birth, he indicates that he was told of the events by family members. He also discussed the assaults and threats he endured from gangs in Guatemala after the civil war. The Petitioner generally stated that the trauma he experienced in Guatemala caused him to feel "an intense reaction" to the events at the factory, but did not further address the impact the conditions had on his wellbeing. Although he generally described a tense and intimidating environment, the Petitioner did not elaborate on or specifically describe any physical or psychological suffering or trauma during his 18-month employment at the factory or as a result of his employer's obstruction of justice. Instead, the Petitioner's description of his psychological suffering indicates that it did not begin until after ICE's immigration raid, when he was arrested and placed in immigration detention for 22 days because of his unauthorized presence in the United States. The Petitioner recounted that after ICE arrested him in 2007, "the old memories full of fear, uncertainty and having no recourse in a threatening situation, returned to me." He described the lack of food, the treatment he received while in detention, and the uncertainty about his situation, and stated that after his release, he

⁴ The DOL cited the offense of destruction, alteration, or falsification of records in Federal investigations and bankruptcy, which is defined as, in pertinent part:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

“suffered a severe emotional toll.” He discussed being reminded of the civil war in Guatemala, and suffering from fear, confusion, and disorientation, which lasted “for about a year after the arrest.” Again, the focus in these affidavits is on the anxiety and depression the Petitioner suffered as a result of ICE’s enforcement action, not his employment at the factory or the obstruction of justice.

The psychological evaluation also does not show that the Petitioner suffered serious or permanent harm as a result of his employer’s actions. The evaluation diagnoses the Petitioner with PTSD and major depressive disorder, moderate severity, with anxious distress. The evaluation discusses the Petitioner’s past history in Guatemala as evidence that he had traumatic life experiences that influenced how he reacted to the working conditions at the factory. The psychologist concluded that because of the traumatic circumstances the Petitioner experienced in Guatemala, he “was already affected by these prior experiences and at risk . . . if further adverse circumstances should occur.” The Petitioner reported to the psychologist that he was worried about losing his position at the factory if he complained about the conditions and he felt intimidated because the factory owner carried a pellet gun, which he used to shoot birds. The Petitioner also reported that he was concerned about the factory closing because of its fraudulent business practices. However, other than describing the workplace as being “marked by worry, anxiety and fear because of the intimidating and hostile behavior of the boss . . . [and his] apparently fraudulent business practices.”⁵ the evaluation does not describe permanent or serious harm to the Petitioner as a result of his employment during this time, even taking into consideration his past history in Guatemala.

Moreover, the psychological evaluation concludes that the Petitioner’s employment was just one of several factors that contributed to his diagnosis of PTSD, depression, and anxious distress. The other factors include the ICE enforcement action on the factory, resulting in the Petitioner’s arrest and detention, and a second ICE apprehension and one-month detention of the Petitioner in 2015. As discussed, the Petitioner in his affidavits recounted that his mental health began to deteriorate and he had flashbacks to the trauma he suffered in Guatemala after the first time ICE arrested him and placed him removal proceedings, indicating that this event triggered his psychological conditions. Although ICE may have conducted an immigration raid on the Petitioner’s workplace after learning of the factory owner’s obstruction of justice, this enforcement action was not part of the criminal activity. The Petitioner must demonstrate that the obstruction of justice itself resulted in substantial abuse.

After consideration of the various factors and standard set forth in 8 C.F.R. § 214.14(b)(1), the overall evidence is insufficient to support a finding that the Petitioner suffered substantial physical or mental abuse as a result of having been a victim of obstruction of justice. Here, the Petitioner has not described, and the evidence does not show any lasting physical or mental harm. Indeed, in his

⁵ The psychologist’s conclusion that at least part of the Petitioner’s anxiety was based on the Petitioner’s awareness of fraudulent business practices and concerns about the factory closing because of the violations of wage and labor laws is not consistent with the Petitioner’s own claims. Specifically, the Petitioner’s affidavit provides that it was not until the Petitioner met with the DOL that he began to understand that his employer was violating U.S. labor, immigration and criminal laws.

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affidavit he indicated that his mental suffering (which we have attributed to his detention with ICE) lasted approximately one year. Although the Petitioner contends that his 18-month period of employment was “highly emotionally distressing,” he has not established the severity of the factory owner’s conduct, which included inappropriately docking wages, and yelling at, and threatening to terminate employees. Further, while the Petitioner generally described the work environment as anxiety-inducing and worrisome, he has not established the severity of his resulting emotions and trauma or otherwise specifically discussed the impact the work environment and the ensuing obstruction of justice had on his emotional wellbeing. Even taking into consideration the Petitioner’s traumatic childhood and adolescence, the Petitioner has not established that he suffered substantial physical or mental abuse as a result of having been the victim of obstruction of justice. Accordingly, he is not statutorily eligible for U nonimmigrant classification.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-M-*, ID# 604775 (AAO Dec. 5, 2017)